

**MINUTES OF
FAUQUIER COUNTY BOARD OF ZONING APPEALS
MAY 6, 2004**

The Fauquier County Board of Zoning Appeals held its regularly scheduled meeting on Thursday, May 6, 2004, beginning at 2:00 P.M. at the Town of Warrenton Police Department, 333 Carriage House Lane, Warrenton, Virginia. Members present were Mrs. Margaret Mailler, Chairperson; Mr. John Meadows, Vice-Chairperson; Ms. Sonja Addison, Secretary; Mr. James W. Van Luven; Mr. Maximilian A. Tufts, Jr.; Mr. Mark Rohrbaugh; and Mrs. Carolyn Bowen. Also present were Ms. Tracy Gallehr, Assistant County Attorney; Ms. Kimberley Johnson, Zoning Administrator; Mr. Fred Hodge, Assistant Zoning Administrator; and Mrs. Debbie Dotson, Office Associate III.

MINUTES: On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the Board of Zoning Appeals voted to approve the minutes of the March 4, 2004, meeting.

The motion carried unanimously.

On a motion made by Mr. Van Luven and seconded by Mr. Tufts, the Board of Zoning Appeals voted to approve the minutes of the April 1, 2004, meeting with the following corrections:

- page 3, paragraph 3, change "Plan and would" to "Plan which would";
- page 4, last paragraph, change "but only to have an agreement with" to "but only to have entered into an agreement with";
- page 6, paragraph 5, change "questions, of if" to "questions, or if";
- page 12, paragraphs 2, 6, and 7, change "Board" to "Board of Zoning Appeals"; and
- page 19, paragraph 12, change "property can exceed" to "property cannot exceed".

The motion carried unanimously.

LETTER OF NOTIFICATIONS AND PUBLIC NOTICE: Mrs. Dotson read the Public Hearing Protocol. Mr. Hodge stated, that to the best of his knowledge, the cases before the Board of Zoning Appeals for a public hearing had been properly advertised, posted, and letters of notification sent to adjoining property owners, except that Item #3 was not posted by the deadline date by the applicant.

APPEAL #ZNAP04-MA-003, RAY PENNINGTON, III (OWNER)

Applicant is appealing the Zoning Administrator's decision that a Mountain View Estates lot is not a buildable lot, PIN #6958-38-7138, located in the Marshall District, Warrenton, Virginia.

Mrs. Mailler stated the appeal was not a public hearing.

Mrs. Bowen stated that she would recuse herself from any discussion or vote on this matter because she had made a prior decision on this matter in the 1980's when she was Zoning Administrator for Fauquier County.

Ms. Johnson stated that the applicant was appealing her decision in October 2003 to deny a zoning permit to build a single family home on the subject property. The denial was based on her determination that the lot was not a buildable lot. She stated that the Board of Zoning Appeals heard arguments at the March 2004 hearing, and that Mr. Pennington and his attorney had presented some new arguments and information at the March hearing. The Board of Zoning Appeals had deferred decision on the appeal from March to allow the Zoning Administrator to respond to the new information presented and to allow the applicant to provide a title report to support their argument. Ms. Johnson stated that the argument made by the applicant in the original application was that the lot was created in 1977 with recordation of a plat; she noted that she had presented evidence in March that the 1977 plat was not a plat of subdivision. The applicant then presented a new, second, argument at the March hearing; the new argument was that the lot had existed since the early 1900's, that it was a lot known as the Gaines parcel, and that they had title work to prove this. The applicant was asked by the BZA to provide the title report to verify that Mr. Pennington's lot is the Gaines lot from the early 1900s. The applicant has not provided you this title report. Rather, a letter has been provided dated April 29, 2004 which lays out a chain of title that shows the lot was created sometime between 1973 and 1977. Ms. Johnson noted that the applicant has not proven their argument; rather the chain of title reflected in the letter shows that the lot was created when the subdivision ordinance was in effect, but does not comply with the subdivision ordinance that was in effect. She stated that the lot was not legally created, and that the chain of title reflected in the letter supports the Zoning Administrator's conclusion.

Mr. Pennington, applicant, stated he disagreed with Mrs. Johnson. He stated that the title report showed the lot was never a part of the Mountain View Subdivision. He stated that he has additional information on the Gaines property, which was taken through adverse possession, but there are multiple issues in this case and we don't need to get into the Gaines parcel if Ms. Johnson will answer a few questions.

Mrs. Mailler asked Mr. Pennington to address his comments and questions to the BZA, not Ms. Johnson.

Mr. Pennington stated the Mountain View subdivision plat shows the subject property outside the subdivision tract. Mr. Pennington questions how it was established that the subject property was ever part of the Mountain View tract. Mr. Pennington stated that Ms. Johnson refers to a subdivision ordinance in place at that time, but that the plat stamped by Mr. McNear was outside the subdivision ordinance, and therefore the subdivision ordinance in place at the time would not be relevant. He noted that Ms. Johnson on Item #3 of her report states "Mr. McNear stamped the plat for transfer because it was an existing residual lot," that Mr. McNear in his statement indicated no subdividing was taking place with the plat, and therefore she concludes that no subdividing was taking place with the plat." He stated that Ms. Johnson is trying to apply

a Zoning Ordinance which has been repelled, overturned, and has no supporting statute and a Subdivision Ordinance where no subdivision has occurred. Mr. Pennington further stated they have created a theory that subdividing occurred with the 1977 plat. He reiterated that the lot is outside the Mountain View subdivision and the stamp shows no subdividing is occurring. The county regulations that Ms. Johnson is trying to apply states that if there is a remnant it must be consolidated with another parcel; my question to Ms. Johnson is why did no such consolidation take place. There has been no attempt since 1973 to consolidate the property with another and the County has the authority to do so if it is an improper lot. Mr. Pennington stated that the definition the county has for a lot does not refer to whether a lot is buildable or not buildable; it is a parcel of single ownership located on any map at any location at any time and Ms. Johnson refers to my property over and over again as a lot. If it is not a lot, I don't know what it is. Mr. Pennington stated that he pays taxes on it, everyone else has paid taxes on it and Ms. Johnson is incorrect in her assessment that I have only been taxed for one year on the lot. The reassessment done in 2002 indicates that my lot is a building lot because I went and got the application for a drainfield permit. My discussion with the Commissioner of Revenue is if you can prove that you cannot get a drainfield or you can prove the lot is in a flood plain then it would not be assessed as a building lot. The lot meets all current requirements. Current zoning requires 2 acres.

Mr. Tisinger, attorney for the applicant, stated that what is for sure right now is that there is a lot. He acknowledged that the title to this lot is anything but clear, but there is a lot. He stated that the question is whether this is a pre-existing lot or was the lot created through subdivision. Mr. Tisinger stated when Mountain View Estates was created eleven (11) lots were created. In the chain of title, at no point in time is this 2.8 acre lot ever referenced as being part of that or at any time is there any reference of any subdivision done to create the 2.8 acre lot. He noted what is for sure is that in 1977 when a Fauquier County official put a plat to record, it was not a plat of subdivision but a plat of record of transfer. Now whether the lot was created then or whether it was created before is again uncertain but at that point and time there is certainly a lot there in 1977 and a Fauquier County Official approved and ratified it. At that point in time, if Fauquier thought it was a 2.8 acre residual lot it was the County's obligation to fold it back in. But they didn't do that. They let this lot be created and the County let it be transferred several times thereafter. He stated that looking at the title that we provided today, I know that Ms. Johnson will reference and Ms. Gallehr will probably reference too the larger tracts of 130 acres and 70 acres. Perhaps this was a portion of that property when it became a 2.8 acre lot and it could have occurred prior to 1973. The lot adjacent to Mr. Pennington's is a 1.5 acre lot. That has been deemed a buildable lot. It is our position that the uncertainty here should not be counted against Mr. Pennington. It should be on the County of Fauquier to show that this was not an existing lot before 1973. It meets the zoning requirements as they exist today. The adjacent lot is a buildable lot. There is nothing in the record to show that this was ever a part of the Mountain View Estates. There is no record to support the fact that this was a surveyor's error or that it is a remnant of Mountain View Estates. As such we are asking you to reverse the decision of the Zoning Administrator and to deem this as a buildable lot.

Ms. Johnson responded that the crux of the issue here is that this lot should have been part of the Mountain View subdivision, but wasn't. She referred the Board to number 5 in the chain of title provided by the applicant and noted that it says in 1973 there is a 119 acre parcel and a 71 acre parcel. Now, if you move up to Number 4, Mountain View Estates has been created and there is this residual 2.8 acre parcel. The only way the 2.8 acre parcel could have been legally created in this case between #5 and #4 is through subdivision. There is no subdivision in the record and that is because when one of these larger parcels was subdivided this 2.8 acre piece of land, because of a surveyor's error, was not included in that subdivision. So there was a remnant of land left out that was not part of the Mountain View subdivision but should have been at the time pursuant to the regulations in place because you could not have created a 2.8 acre parcel. Therefore, it was a lot not created according to the subdivision regulations in place at the time. The Zoning Ordinance is clear that you have to meet the regulations at the time of subdivision in order to subdivide. This lot does not do that. It was a 10-acre minimum or a 5-acre minimum for a family transfer and, therefore, it is not a buildable lot. It certainly is a lot, but not a buildable one.

Mr. Meadows noted that the BZA had deferred the decision on this case from March in order to allow the applicant to provide some specific material he referred to in his argument. He stated that the material for the applicant's specific argument had not been presented to the BZA as requested. Mr. Meadows stated that the BZA could not continue to allow new arguments to be made at each meeting. He reiterated that he did not see where the material had been provided to the BZA for the specific argument made by the applicant last month.

Ms. Gallehr stated that Mr. Pennington and his attorney were instructed by this BZA at the last meeting to obtain a title report that showed the parcel had a clear chain of title back to the Elvira Gaines property, and that the applicant has admitted today that this title work has not been provided.

Mr. Meadows asked Ms. Gallehr if he was correct the new arguments were moot, because they had made a different argument and not proven it.

Ms. Gallehr stated that the applicant was not given by the BZA the opportunity to come in with a new argument. She noted that would effectively be extending the appeal period to allow the applicant to come up with new arguments between his initial appeal and subsequent meetings. Ms. Gallehr reiterated that Mr. Pennington and his representative had been asked to provide specific evidence in support of his argument at the initial meeting, and that evidence had not been provided.

On a motion made by Mr. Rohrbaugh and seconded by Mr. Van Luven, the Board of Zoning Appeals, after due notice and hearing as required by the Fauquier County Code and Code of Virginia, moved to affirm the decision of the Fauquier County Zoning Administrator in Appeal #ZNAP04-MA-003 that the 2.8 acre parcel currently owned by Ray Pennington, known as PIN #6958-38-7138-000, is not a buildable lot. This Board finds this lot to be not buildable.

AYES: Mr. Meadows, Ms. Addison, Mr. Van Luven, Mr. Tufts, Mr. Rohrbaugh,
Mrs. Mailler

NAYES: None

ABSTAINED: Mrs. Bowen

ABSENT: None

The motion carried.

**SPECIAL PERMIT #SPPT04-CR-022, BENJAMIN C. GRAVETT (OWNER) /
RIVERSIDE MULCH, INC. (CONTRACT OWNER)**

Contract Owner is seeking special permit approval to 1) locate a mulch business on the property with 2) retail sales in conjunction with the use, PIN #7819-08-5767, located on Midland Road, Cedar Run District, Midland, Virginia.

Mr. Hodge stated that the required public hearing sign posting deadline was not met by the applicant; therefore, the Board of Zoning Appeals could not hold a public hearing.

On a motion by Mr. Meadows and seconded by Mr. Tufts, the BZA moved to defer the special permit application to the June 3, 2004, hearing.

The motion carried unanimously.

SPECIAL PERMIT #SPPT04-CT-024, TAMMY J. ABEL (OWNER)

Owner is seeking approval to amend the special permit approved on January 8, 2004, in order to change a condition related to access into and out of the site, PIN #6994-19-7452, located at 7392 Cedar Run Drive, Center District, Warrenton, Virginia.

Mr. Hodge stated that the BZA made a site visit last month and kept the public hearing open. He stated that the BZA revisited the site earlier today. He reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Tammy J. Abel, owner, appeared representing the application and stated that she preferred Option #1 in the staff report.

Mrs. Mailler asked if there were any speakers for or against this application.

John Body, neighbor, stated that he was in favor of the customer entrance off of Cedar Run.

Joe White, neighbor, stated that he was strongly in favor of Option #1 in the staff report.

Mr. Vernacy, neighbor, stated that if someone can run a business out of their home and keep invisible so that the character of the neighbor remains residential he had no objections to that.

Katherine Rizzo, neighbor, encouraged the BZA to select Option #1.

Maggie Zinzer, neighbor, stated she was against Option #1 for safety reasons and that Ms. Abel should be required to have the circle drive or she should not be allowed to move forward.

Jim Bush, Rt. 29 resident, stated agreement with Ms. Zinzer. He stated concerns with traffic and safety issues.

Brian Mills, neighbor, stated concerns with safety issues and increase in traffic.

Mrs. Mailler asked if there were any other speakers for or against the application. There be no further speakers, the public hearing was closed.

On a motion made by Mr. Meadows and seconded by Mr. Van Luven, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the amendment to the special permit, based upon the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The delivery and pick up area and parking for the pet grooming business shall be installed off Cedar Run Drive as shown in Option #1. Employee and owner will use entrance off Ghadban Court. The entrance off Ghadban Court is to be a graveled area not T-shaped. It is to be double wide, adequate for two vehicles to park. It is to be properly screened and landscaped.
2. The entrance off Cedar Run Drive is to be used for customers only with only one (1) vehicle at a time. The existing turn around spot is to be made twice as wide as it exists today, May 6, 2004. It is to remain graveled and adequate landscaping and screening is to be provided.
3. The hours of operation shall be limited to 9 A.M. to 5 P.M., Monday through Saturday.
4. No more than one non-resident shall be employed on the site.
5. No sign shall be posted for the business.
6. Time limit of 3 years.
7. The special permit does not convey with the sale of the property.
8. No overnight stays of dogs.
9. Provide a staggered schedule for drop offs and pick ups and provide this schedule to staff.
10. Septic tank cleaned every 6 months.
11. Subject to site plan approval.

There was extensive discussion among the BZA members on the type and location of landscaping that should be required. It was agreed that evergreen shrubs should be placed around the parking areas to supplement the azaleas Ms. Abel plans to plant, and that Ms. Abel should bring a landscape plan to staff for approval.

On a motion made by Mr. Van Luven and seconded by Ms. Addison, the BZA voted to amend the motion to add the following condition:

12. Landscaping shall be provided around the parking areas to soften the parking areas and make them appear residential; the landscaping shall include evergreen plantings, and a plan for the landscaping shall be submitted to and approved by the staff in conjunction with site plan, subject to the standards in the zoning ordinance for landscaping.

The motion to amend the motion carried unanimously.

The original motion carried unanimously.

SPECIAL PERMIT #SPPT04-CR-026, STEVEN W. RODGERS, TRUSTEE (OWNER) / RICHARD SHEAFFER AND CHARLES MOSS (CONTRACT OWNERS)

Contract Owners are seeking approval to locate a contractor's office shop and materials storage yard of more than 1 acre for concrete business, PIN #7809-89-8037, located at 5029 Airport Road, Cedar Run District, Midland, Virginia.

Mr. Hodge stated that a BZA site visit was made earlier that day and he reviewed the staff report, a copy of which is attached to and made a part of the minutes.

Charles Moss, contract owner, appeared representing the application and noted agreement with the staff report. He stated that this was the best location in the County for his type of business.

Mrs. Mailler asked if there were any speakers for or against the application. There being no speakers, the public hearing was closed.

On a motion made by Mr. Tufts and seconded by Mr. Meadows, the BZA noted that due notice and hearing as required by the Code of Virginia Section 15.2-2204 and Fauquier County Code Section 5-009 had been provided, and voted to grant the special permit, with the following findings:

1. The proposed use will not adversely affect the use or development of neighboring properties and will not impair the value of nearby land.
2. The proposed use is in accordance with the applicable zoning district regulations and applicable provisions of the Comprehensive Plan.
3. Pedestrian and vehicular traffic generated by the proposed use will not be hazardous or conflict with existing patterns in the neighborhood.
4. Adequate utility, drainage, parking, loading and other facilities are provided to serve the proposed use.
5. Air quality, surface and groundwater quality and quantity will not be degraded or depleted by the proposed use to an extent that would hinder or discourage appropriate development in nearby areas.
6. The proposed use is consistent with the general standards for special permits.

The special permit is granted subject to the following conditions, safeguards, and restrictions upon the proposed uses, as are deemed necessary in the public interest to secure compliance with the provisions of this Ordinance:

1. The use shall be generally consistent with the conceptual special permit plan submitted with the application.

The motion carried unanimously.

OTHER BUSINESS:

Mrs. Dotson stated to the BZA that June's meeting would be held at the Town of Warrenton Police Department and that July's meeting is scheduled to be at the Warren Green building.

ADJOURNMENT: There being no further business before the BZA, the meeting adjourned at 3:12 P.M.

Margaret Mailler, Chairperson

Sonja Addison, Secretary

Copies of all files and materials presented to the Board are attached to and become a part of these minutes. A recording of the meeting is on file for one year.